



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

July 17, 2013

REPLY TO THE ATTENTION OF:

Nicole Cantello
AFGE, Local 704
77 W. Jackson Blvd.
Chicago, IL 60604

Re: Freedom of Information Act Request
EPA-R5-2013-006997

Dear Ms. Cantello:

This letter responds to your Freedom of Information Act (FOIA) request dated June 4, 2013. Enclosed is the Agency's response to your request for documents:

1. AFGE Local 704 requests records that articulate the Agency's plans to make adjustments to PARS agreements based on hours furloughed.

Agency's Response: *The "Frequently Asked Questions" document on the Agency's intranet site contains guidance on PARS considerations related to the furloughs. The Agency has included two documents: "Questions and Answers from the Town Hall Meeting with the Acting Administrator," dated May 29, 2013; and "Administrative Furlough Questions and Answers for Employees," dated May 29, 2013.*

2. Provide records/documentation to support the statements: "Because of the high percentage of the budget devoted to personnel, furloughs cannot be avoided" and that "...this furlough will promote the efficiency of the service."

Agency's Response: *The materials supporting the proposed furlough were made available to you on the EPA intranet (<http://intranet.epa.gov/sequester>) and include the President's Sequestration Order, which references the Balanced Budget and Emergency Deficit Control Act, as amended (the "Act"). That Act is set forth at 2 U.S.C. 901a et seq. The statute sets out the spending limits, complex formulas for calculating the amount of the sequester for each account or program, and instructions for implementation. Also posted on the intranet is a PowerPoint presentation titled "Sequester Impact on EPA's Budget," (<http://intranet.epa.gov/sequester/sequester-impact/index.html>) which explains the process used at EPA to analyze the need for furloughs, points out that nearly half the funds subject to sequester are personnel salary and benefits costs, and demonstrates how the number of furlough days was determined. The Agency has provided a copy of the PowerPoint Presentation.*

3. Provide records/documentation that demonstrates the decisions to give cash awards to some senior managers in FY 2013 despite the impending sequestration.

Agency's Response: There are no documents we are aware of which discuss the relationship of any cash awards which were given to the impending sequestration.

American Federation of Government Employees, Local 704, requests information and copies of documents, including e-mail records, phone conversation records, text messages, and all other records that are described below:

4. All communications by management officials to other management officials which discuss or provide direction to managers regarding the furlough.

Agency Response: Agency Response: All intra-management instructions regarding the furlough were included on the Agency's intranet site (<http://intranet.epa.gov/sequester>). The two documents by which supervisors were directed on how to process the furloughs are called "Operational Guidance for Managers and Employees," Phase 1 and Phase 2. Those documents are included in this response.

5. A copy of the index which lists the documents which comprise the administrative record and a copy of the administrative record that documents the Agency's decision to furlough employees. This includes all documents prepared by management which recommended, ordered or directed that a furlough be implemented as well as all records which document the decision that a furlough would be required. We are seeking copies of the records which have the required signatures on the documents showing that the appropriate Agency official with authority to take such actions has signed the document. Please note that the information available to employees on the Intranet site <http://intranet.epa.gov/sequester/> does not include the requested documents. Although the site contains a copy of an all employee message transmitted by e-mail to employees dated March 1, 2013, concerning the Agency decision to furlough employees, that document is simply a mass mailer type of message and is not the signed, official, record of decision that shows which EPA management official has made a decision and documented the decision.

Agency Response: Your request for an "administrative record" is unclear and vague. A previous reply has noted the manner in which records explaining the furloughs have been made available to the union. Please clarify this request to detail exactly what you are seeking. The Proposal and Decision documents clearly identify the Officials who were sent those documents. The Union has not established any basis to doubt the authenticity of the Proposal or Decision documents. As you know, a furlough is an adverse action that is subject to the regulatory procedures set forth at 5 CFR Part 752, Subpart D and MCBA, Article 37 (both attached). Such procedures require a Proposing Official and a Deciding Official. The Proposing Officials were Division/Office Directors, and the Deciding Officials were one supervisory step higher up than the Proposing Official, as envisioned by the regulations.

- i. Demonstrate that the administrative record is compliant with section 508 of the Rehabilitation Act. Also, provide documentation how the agency responded to a message dated from April 4th from a bargaining unit member with a known and obvious disability requesting assistance with accessing the information provided on the intranet regarding the furlough such as the power point document.

Agency Response: See previous response. The request in terms of the Rehabilitation Act is vague and would require additional clarification. However, an Agency official did personally assist a disabled employee, providing hard copies of all relevant documents from the EPA Intranet site. Several written responses from this Agency employee to the disabled employee are included.

- ii. Documentation that articulates the factors used to assess each employee's response to the proposed furlough notice.

Agency Response: As stated above, 5 CFR Part 752, Subpart D governs adverse actions against employees. The Agency followed the procedures of this Part, as well as MCBA, Article 37. Copies of those provisions are included. The Decision letters clearly state the reasoning behind the decisions to furlough employees.

- iii. Information about the statute (i.e., section from the U.S. Code), and regulation that authorizes the Agency, or any specific individual in the Agency, to furlough employees under the current circumstances. The information provided to employees on the Intranet site and in the notices received by employees does not cite the regulatory or statutory authority to furlough employees in the current situation.

Agency Response: The Proposed Notice, the Decision, and the information on the Intranet site explain the bases for the furloughs. Also see reference to the following general information on Sequestration found at OPM's website:

1) Balanced Budget and Emergency Deficit Control Act of 1985

2) Budget Control Act of 2011 - <http://www.gpo.gov/fdsys/pkg/BILLS-112s365enr/pdf/BILLS-112s365enr.pdf>

3) American Taxpayer Relief Act - <http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>

4) OMB Memorandum M-13-03, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources," dated January 14, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-03.pdf>

5) OMB Memorandum M-13-05, "Agency Responsibilities for Implementation of Potential Joint Committee Sequestration," dated February 27, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-05.pdf> and

6) OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013, dated March 1, 2013 - http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjcsequestrationreport.pdf

- iv. A copy of the delegation agreement and any other document that gave the proposing official in Region 5, Cheryl Newton or OECA's Larry Starfield, the delegated authority to issue a proposed furlough notice.

Agency Response: *As stated above, 5 CFR Part 752, Subpart D and MCBA, Article 37 govern adverse actions against employees. The Agency followed the procedures contained therein.*

- v. A copy of all documents Ms. Newton or Mr. Starfield relied upon as directing them to issue notices to employees that she was proposing they be furloughed.

Agency Response: *See responses #4 & 5, above.*

- vi. A copy of the delegation agreement and any other document that gave the deciding official in Region 5, Bharat Mathur, or Cynthia Giles, of OECA, the delegated authority to issued a final decision on the furlough proposed by Newton/Starfield.

Agency Response: *As stated above, 5 CFR Part 752, Subpart D and MCBA, Article 37 govern adverse actions against employees. The Agency followed the procedures contained therein.*

- vii. A copy of all documents that Mathur/Giles relied upon as directing him to issue final decisions on the proposed furlough to employees.

Agency Response: *See responses #4 & 5, above.*

- viii. Information regarding the scope of the authority of the deciding official, Bharat Mathur or Cynthia Giles to alter the proposed furlough for any employee. Did the deciding official have any authority to alter, in any way, the number of furlough hours cited in the proposals issued by Newton/Starfield? If the deciding official had such authority, what was the extent of that authority and what kinds of changes was he authorized to make in relation to what Newton/Starfield proposed?

Agency Response: *See responses #4 & 5, above.*

- ix. The options considered by the deciding official to minimize the impacts of the sequestration and furlough.

Agency Response: *Information detailing the reasons for the furlough, including Q&A about the actual scheduling of furlough dates, is available on the Intranet and in response #2, above.*

- x. Supervisory notes of EPA management officials, including senior officials, to the decision of furlough employees which is a non-disciplinary adverse action.

Agency Response: *There were no supervisory notes for each employee, since the furlough is not a disciplinary action.*

- 6. AFGE Local 704 requests information and copies of documents, including e-mail records, phone conversation records, text messages and all other records that are described below:

- i. On the Agency intranet site employees were directed to for information about the basis for the furlough, the right side of the web page contains a box with the following heading:

**"Documentation Supporting the EPA Sequestration and Furlough Notices
EPA is providing its employees information in support of the EPA
sequestration decisions"**

In that box there is a link to a power point document (i.e., slide show) titled "Sequester Impact on EPA's Budget. Slide #5 from the power point document contains a bullet that states that "For context, the daily salary cost for Agency personnel is approximately \$8.7 M." Provide information that explains how that number was determined, whether the number is based on actual expenditures or budgeted expenditures, whether the number includes benefit costs such as the Agency's share of health insurance costs. If the \$8.7 M figure is not based on actual expenditures, what is the actual average expenditure per day in dollars and what is the anticipated or projected average daily expenditure rate in dollars through the remainder of FY 2013?

Agency Response: *In addition to the information presented in the power point presentation on the EPA Intranet site, please see an attached document showing EPA payroll figures that was included in an information request response from Region 2 of EPA to AFGE.*

- ii. In the same slide mentioned in #2.i above (i.e., Slide #5), the Agency cites FY 2013 updated salary costs as being \$2,272,415,000. Provide information that explains how that number was determined, whether the number is based on actual expenditures or budgeted expenditures, whether the number includes benefit costs such as the Agency's share of health insurance costs.

Agency Response: *Please see response to 6i, above*

- iii. If the information on slide #5 was based on budgeted dollars and not on money actually spent or projected to be spent, why didn't EPA determine the number of furlough days based on actual expenditures already made and projected expenditures through the remainder of the fiscal year?

Agency Response: *Please see response to 6i, above*

- iv. Slide #5 cites budgeted amounts of money. As of the date of the proposed furlough notice and the date of the decision on the furlough issued to employees, what was the approximate amount of funds still remaining in the appropriations from which the \$2,272,415,000 figure was derived?

Agency Response: *Please see response to 6i, above*

7. AFGE Local 704 requests information and copies of documents, including email records, phone conversation records, text messages and all other records that are described below:
 - i. In an April 4, 2013, memo from the Office of Management and Budget (OMB) titled "Ongoing Implementation of the Joint Committee Sequestration", OMB states the following: "Similarly, while agencies with carry over balances or reserve funds should consider appropriate use of these funds to maintain core mission functions in the short term, it is important not to use these funds in a manner that would leave the agency vulnerable to future risks due to a potential lack of available funds in future years." Does the Agency (EPA) have carry over balances or reserve funds from FY 2012 that are not reflected in the information presented in the slide presentation titled "Sequester Impact on EPA's Budget?." If the Agency had any carryover funds from FY 2012, were any of those funds used to reduce the number of furlough days? Is the Agency planning to have FY 13 carry over balances and reserve funds left at the end of FY 13 that will be on the books in 2014? If so, what is the dollar amount of carry over funds or reserve funds that EPA is planning or projecting that will be on the books at the start of FY 2014? Please note that we are only interested in the amounts of reserve and carry over funds that fall into the same category of appropriations for personnel costs/ payroll funds included in EPA's slide presentation. We are not seeking information about the amounts of reserve and carry over funds that cannot be used to pay personnel/payroll costs.

Agency Response: *This request is written as an interrogatory and not a request for documents. Previous responses indicate the sources of information related to financial considerations that went into the decision to furlough employees.*

8. Documents posted on the Agency's sequester Intranet site indicate that "emergency personnel' could be required to work on a designated furlough day. The same documents indicate that managers and supervisors will **"Take disciplinary action against an employee who fails to leave or discontinue working during designated hours."**

- i. Which employees fall in the category of "emergency personnel"? Provide documentation.

Agency Response: Region 5 has not designated any employees as emergency personnel for furlough purposes. There is no documentation responsive to this request.

- ii. Provide a list of AFGE Local 704 bargaining unit employees who may be required to work during designated furlough hours.

Agency Response: There is no such list responsive to this request.

- iii. Identify the Region 5 EPA employees who are exempt from part of all of the furlough.

Agency Response: There are no Region 5 employees who are exempt from the furlough.

- iv. If an employee is told he or she must work during designated furlough hours, how will that order or direction be documented and provided to the employee so that the employee has some proof given the mandated that managers must take disciplinary action against an employee who fails to leave or discontinue working during designated hours.

Agency Response: See above replies; 8(i), (ii), and (iii).

- v. Regarding the disciplinary action that the Agency has decided will be taken against employees who fail to leave or who fails to discontinue working during designated hours, what is the disciplinary action that will be taken? What are the minimum and maximum disciplinary actions that the Agency will take for such offenses?

Agency Response: Regarding disciplinary actions, no such determination has been made.

- vi. What is the basis for taking disciplinary action against an employee who fails to leave during designated furlough hours given that the Agency has not prohibited employees from being in their office or the building where their office is located during designated furlough hours?

Agency Response: See above, 8v.

9. AFGE Local 704 requests information and copies of documents, including e-mail records, phone conversation records, text messages and all other records that are described below:

- i. A list of employees who received the proposed notice of furlough by the Agency.

Agency Response: All Regional employees received the furlough notice as well as the furlough decision. The Agency is providing the Union with an "Organization Roster" which includes each employee's name, organization code, department name, employee's title, pay plan, series, grade, and bargaining unit code.

- ii. A list of employees who responded to the proposed notice of furlough.

Agency Response: The Agency is providing the Union with a spreadsheet which contains a list of employees who responded to the Notice of Proposed Furlough. The list includes the employee name, date of notice, date read, and date reply received.

- iii. A list of employees who received a reply from the Agency based on the response sent by the employee, and the factors used to evaluate the employee's response to the proposed furlough; Of those employees who submitted a response, a list those who did not receive a final notice of furlough and why.

Agency Response: All employees who received furlough Notices also received furlough Decisions.

- iv. A list of employees who did not receive a notice of furlough.

Agency Response: There are no employees that we are aware of who did not receive a Notice of Furlough.

- v. A list of employees who did not receive a proposed notice of furlough.

Agency Response: See above, 9iv.

- vi. Descriptions of the record-keeping system to keep track of the above.

Agency Response: The spreadsheet was designed to track the numbers and date of employees who replied to the Proposed Notice to Furlough.

The FOIA did not meet the \$14.00 minimal fee, therefore, there is no cost associated with this FOIA. This amount reflects the costs incurred by the Resources Management Division with responding to your request. A link to the responsive documents will be issued to you via FOIA online.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, email: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington,

D.C. 20004. Your appeal must be made in writing and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the request number EPA-R5-2013-006997. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Rosalind Freeman at (312) 886-2911, if you have any questions about this matter.

Sincerely,



Scott Sharon

Acting Supervisor, Human Resources Specialist
Labor and Employee Relations Section
Resources Management Division

Enclosure